THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.1216 of 2005

Date of Decision: 15 - 9 - 2006

Avtar Singh **.....Petitioner**

v.

Niranjan Singh and another **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Vikas Sagar, Advocate
for the petitioner.

None for the respondents.

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P.S.PATWALIA, J.

The present revision petition has been filed against order dated 19.1.2005 vide which an application moved by the petitioner, plaintiff in the suit, seeking permission to lead secondary evidence in respect of the sale certificate pertaining to the property in dispute has been declined.

Petitioner filed a suit for possession of the property mentioned therein. Defendant No.2 in the suit was the widow of the petitioner's brother. It was the case of the petitioner that after the death of his father, mother and brother, the petitioner along with defendant No.2 became the owners of the property in question in equal shares being the legal heirs of the deceased persons. Defendant No.1 was in possession of the property and the petitioner was seeking possession from him. One of the issues in the suit was as to whether the plaintiff, petitioner herein, is entitled to possession and the burden to prove this issue was on the

plaintiff. Another issue was as to whether the defendant had become owner of the property by way of adverse possession and the onus to prove this issue was upon the defendant.

Both the petitioner and defendant No.1 concluded their evidence. Defendant No.2 was proceeded against ex parte. At the stage of rebuttal, the petitioner, plaintiff in the suit, filed the instant application seeking permission to lead secondary evidence in respect of the sale certificate which was issued at the time when the petitioner's father deceased Harnam Singh had purchased the property in auction. Petitioner had contended that the certificate was in possession of defendant No.2 and she did not produce the same as she never came to contest the suit. Petitioner further contended that in order to prove the said certificate of sale by auction in respect of the suit property, he made efforts to get a certified copy of the same from the competent authority but his application has been returned in original with a report that despite best efforts the file could not be traced out and it has further been mentioned in the report that since most of the record pertaining to the year 1967 had been destroyed in the floods which occurred in 1990 the present file would also possibly have been destroyed. It was under these circumstances that the application for leading secondary evidence to produce the sale certificate was filed.

Defendant No.1 contested the application. He stated that the sale certificate, photostat copy of which was filed could not be linked to the property in question. He further stated that it was not very legible. He also contended that from a reading of the report it was not sure that the original had been destroyed or lost.

The trial Court after considering the application rejected it on the ground that no reference was made of the said certificate in the plaint. The trial Court was further of the view that such an application could not be allowed at the stage of rebuttal. It was also found that the plaintiff had failed to establish any

ground for leading secondary evidence under Section 65 of the Indian Evidence Act, 1872 (hereinafter to be referred as, `the Act').

I have heard learned counsel for the petitioner and perused the record. After having considered the matter, I am of the opinion that the present revision petition deserves to be allowed. The report submitted on an application moved by the plaintiff for securing certified copy of the order reads as hereunder:-

> "Respected Sir,
>
> It is requested that the file if Goshwara No.3995, was searched in detailed manner but till date this file has not been traced out. It is possible most of the record pertaining to 1967 have been destroyed in floods occurred in 1990.
>
> Sd/-
> 05.04.2002
> Returned: 08.04.2002."

A reading of this report would show that the application has been rejected as the record of the year 1967 had been destroyed in the floods. I am of the opinion that under these circumstances, on merits, the application filed by the petitioner would be covered under Section 65(c) of the Act.

Further question that arises is as to whether the plaintiff can be given this right at the stage of rebuttal. In this regard, I am of the opinion that it should be the endeavour of the Court that all parties should get full opportunity to lead evidence so that the case can be decided on a consideration of the entire material on which the parties seek to rely. The rules of procedure are the hand maids of justice. In the present case, I am therefore of the opinion that the plaintiff should be given an opportunity to lead secondary evidence to prove the sale certificate. The interest of the defendant can be secured by directing that the defendant would also thereafter have one opportunity to lead any evidence which he wants to lead to counter the aforementioned evidence sought to be produced by the plaintiff.

Before concluding I may also mention that by an order made on

25.1.2005 the trial Court had closed rebuttal evidence of the plaintiff. Since I have granted an opportunity to the plaintiff to lead secondary evidence, the said order is also set aside. Apart from the aforementioned secondary evidence the plaintiff shall be given one more opportunity to lead whatever evidence in rebuttal that he may desire. Thereafter as mentioned above, the defendant shall be given one opportunity.

With the aforementioned observations, the present revision petition is allowed and the orders dated 19.1.2005 and 25.1.2005 are accordingly set aside.

(P.S.PATWALIA)
JUDGE

September 15th, 2006.

RC